

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

2004 JAN 16 A 10: 03

SENSITIVE

MUR: 5343

DATE COMPLAINT FILED: November 21, 2002

DATE OF NOTIFICATION: November 29, 2002

DATE ACTIVATED: May 28, 2003

STATUTE OF LIMITATIONS:

November 6, 2007¹

COMPLAINANTS:

Common Cause
through Donald J. Simon, Acting President
Democracy 21
through Fred Wertheimer, President
The Campaign and Media Legal Center
through Trevor Potter, General Counsel
Center for Responsive Politics
through Larry Noble, Executive Director

RESPONDENTS:

Democratic Senate Majority Fund – Non-Federal
Account and Marc Farinella, as treasurer
PAC for a Democratic House – Non-Federal
Account and Moses Mercado, as treasurer
Democratic Issues Agenda and Diane Evans, as
treasurer
Empowerment for the New Century and Antonio
Harrison, as treasurer
U.S. Representative Tom DeLay
Americans for a Republican Majority and Corwin
Teltschik, as treasurer
Strategic Task Force to Mobilize People
Progress for America and its treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)
2 U.S.C. § 431(20)(A)
2 U.S.C. § 441i(a)(1)
2 U.S.C. § 441i(a)(2)

¹ Most of the potential alleged violations are of provisions added to the law by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (March 27, 2002). Accordingly, this statute of limitations date is five years after the November 6, 2002 effective date of BCRA.

2 U.S.C. § 441i(e)(1)(A)
11 C.F.R. § 100.5(g)(4)(ii)
11 C.F.R. § 110.3(a)(3)(ii)
11 C.F.R. §§ 300.2(c)(1), (2), (3)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: Internal Revenue Service

I. INTRODUCTION

This matter arises from the complaint filed in MUR 5338 (The Leadership Forum, *et al.*). The complaint in that matter focused on allegations concerning the Democratic State Parties Organization, Inc. ("DSPO") and The Leadership Forum. To expeditiously address the issues raised with respect to DSPO and The Leadership Forum, the Commission severed the above-captioned respondents from MUR 5338 and opened a new matter with respect to them.² MUR 5338 Certification (January 8, 2003); *see* Memorandum to the Commission, MUR 5338 – The Leadership Forum, *et al.* – Severance of Respondents, Opening of a New MUR, Dec. 20, 2002, at 2. Based on our review of the allegations in the complaint and publicly available information, this Office recommends that the Commission exercise its prosecutorial discretion and close the file as to these respondents.

As we reported to the Commission in our memorandum on Status of Enforcement on October 15, 2003, over the past two years

[w]e have been a great deal more discriminating in generating respondents in order to achieve fair and early notice without sweeping up persons whose conduct is a matter of passing mention in the complaint or whose conduct would not give rise to a violation even if the facts and circumstances alleged are true. We long ago discarded anything resembling the so-called "proper noun" approach, which one commenter at the June 2003 hearing [on enforcement procedures] testified, at least historically, characterized our position.

² Respondents were initially notified of the complaint on November 29, 2002 as part of MUR 5338 and given an opportunity to respond.

1
2 Memorandum on Status of Enforcement, October 15, 2003, at 3. We think this change in
3 approach has helped to address the concern that the Commission "overnotifies" respondents. We
4 also think that the exercise of prosecutorial discretion of this kind allows the Commission to
5 avoid getting consumed chasing down every respondent or allegation tossed into a complaint,
6 however peripheral to the heart of the matter, and instead to use its limited resources more
7 judiciously.

8 At the same time, judgments as to the naming of respondents are not always simple, and
9 this is one such case. Though an argument could be made for launching a broad investigation of
10 the activities of the multiple respondents remaining from the original complaint, we conclude for
11 the reasons discussed below that the Commission should exercise its prosecutorial discretion and
12 dismiss those respondents. Importantly, we do not recommend that the Commission make
13 findings of "no reason to believe" in these circumstances. Dismissal in these instances, and on
14 the grounds of prosecutorial discretion alone, would not prevent the Commission from
15 reconsidering the same allegations with respect to the same respondents if presented in a
16 subsequent complaint.

17 In MUR 5338, the Commission found no reason to believe that The Leadership Forum or
18 DPSO violated 2 U.S.C. §§ 441i(a) or 434(e). In addition, the Commission found no reason to
19 believe that the DNC Services Corp./Democratic National Committee violated 2 U.S.C.
20 § 441i(a). Although the Commission found reason to believe that the National Republican
21 Congressional Committee violated 2 U.S.C. § 441i(a), it decided to take no further action other
22 than to send an admonishment letter. The complaint was received on November 21, 2002, and
23 the case was activated on December 9, 2002. This Office submitted its First General Counsel's
24 Report to the Commission on March 27, 2003, and the Commission approved our

1 recommendations on April 8, 2003. Thus, the Commission has already dealt with the bulk of the
2 complaint.

3 The remaining allegations, which concern the respondents in this matter, are contained in
4 a single paragraph of complainant's 56-paragraph complaint, and are apparently intended to
5 show that there are entities allegedly engaged in conduct similar to that of the principal
6 respondents. Additionally, the complaint contains a caption specifically naming only those
7 respondents as to whom the Commission has already taken final action, and the complaint was
8 filed by, among others, a former Chairman and a former General Counsel of the Commission,
9 who know how to make clear the parties about whom they are complaining. It is true that the
10 complaint alleged that these incidental respondents were "being set up to serve as conduits for
11 national party committees and federal officeholders to raise and spend soft money on federal
12 election activities, *in violation of the BCRA*, and to avoid the disclosure requirements of the
13 BCRA," Complaint ¶ 6 (emphasis added), and that if such an allegation had been submitted in
14 and of itself, and were signed and sworn to, it would have been accepted as a complaint.

15 However, given the Commission's limited enforcement resources, we do not believe that the
16 sparse allegations at issue, interjected as they are in a lengthy complaint that (but for this one
17 paragraph) focuses entirely on different conduct by other actors, justifies the expansive
18 additional investigation that would be required. The Commission has dealt with the conduct that
19 is the overwhelming focus of the complaint, and it is appropriate to devote additional
20 enforcement resources elsewhere.

21 Notwithstanding the considerations addressed above, we might still recommend reason to
22 believe findings if our review of the public record provided a strong set of facts for proceeding

1 with an investigation.³ As discussed below, that is not the case here. In some instances, the
2 available facts fall well short of the reason to believe threshold, and we accordingly recommend
3 that the Commission find no reason to believe. In other instances, it is a close call as to whether
4 the public record warrants a complete investigation, and as to those committees, given the
5 considerations above we recommend dismissal (with no formal finding) based on prosecutorial
6 discretion.

7 **II. APPLICABLE LAW**

8 BCRA provides that national committees of political parties – including national
9 congressional campaign committees – may not solicit, receive, or direct to another person a
10 contribution, transfer of funds or any other thing of value, or spend any funds, that are not
11 subject to the limitations, prohibitions and reporting requirements of the Act. 2 U.S.C.
12 § 441i(a)(1). This prohibition also applies to officers and agents acting on behalf of a national
13 party, and to any other entity directly or indirectly established, financed, maintained, or
14 controlled by a national party committee. 2 U.S.C. § 441i(a)(2).

15 BCRA also prohibits Federal candidates and officeholders or entities established,
16 financed, maintained or controlled by them, from soliciting, receiving, directing, transferring or
17 spending any funds that are not subject to the limitations, prohibitions, and reporting
18 requirements of the Act in connection with an election for Federal office, including funds for any
19 Federal election activity. 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. § 300.61. Nor may Federal
20 officeholders and candidates solicit, receive, direct, transfer, spend or disburse funds in

³ As the U.S. District Court for the District of Columbia has noted, “Although the facts provided in a sworn complaint may be insufficient, when coupled with other information available to the Commission . . . the facts may merit a complete investigation. By the same turn, a persuasive and strong complaint may not merit an investigation because the Commission possesses reliable evidence indicating that no violation has occurred.” *In re Federal Election Campaign Act Litigation*, 474 F. Supp. 1044, 1046 (D.D.C. 1979).

1 connection with any non-Federal election, unless those funds are subject to the source and
2 amount limitations imposed by State law and the Act. 2 U.S.C. § 441i(e)(1)(B); 11 C.F.R.
3 § 300.62.

4 Commission regulations provide a “safe harbor” for certain actions before BCRA’s
5 November 6, 2002 effective date. Thus, the Commission may not find that an entity is directly
6 or indirectly established, maintained or controlled by a sponsor unless that determination is
7 “based on the entities’ actions and activities solely after November 6, 2002.” 11 C.F.R.
8 § 300.2(c)(3).

9 **III. FACTS AND ANALYSIS**

10 **A. Democratic Organizations**

11 The complaint in MUR 5338 identified four organizations that were reportedly
12 established by “Democratic Party operatives” as vehicles for evasion of BCRA’s prohibition on
13 raising non-Federal funds. The complaint identifies:

14 Four soft money funds established by Democratic Party operatives and all
15 reporting their registered address as the same street address as the law firm of
16 Democratic Party attorney Robert Bauer. Mr. Bauer serves as the lawyer for the
17 Democratic Senatorial Campaign Committee (DSCC) and the Democratic
18 Congressional Campaign Committee (DCCC). These funds include the
19 “Democratic Senate Majority PAC – non-federal account” and the “PAC for a
20 Democratic House – Non Federal Account,” and two additional entities, the
21 “Democratic Issues Agenda” and the “Empowerment for a [sic] New Century.”

22 Complaint ¶ 6.

23 Mr. Bauer and the Perkins Coie law firm represent the four Democratic organizations in
24 this matter and filed identical responses on their behalf. Each respondent contends it is not a
25 proper respondent to the complaint because the complaint was not directed to it and does not
26 assert that it violated the Act. These respondents also argue that even if the complaint is deemed

1 to assert that they violated the law, the complaint does not satisfy the Commission's threshold
2 pleading requirements.

3 **1. Democratic Senate Majority Fund**

4 **a. Facts**

5 The Democratic Senate Majority Fund ("DSMF") has two components – a Federal PAC
6 ("DSMF Federal") registered with the Commission and a non-Federal PAC ("DSMF non-
7 Federal") registered with the Internal Revenue Service ("IRS") as a political organization within
8 the meaning of 26 U.S.C. § 527. Both PACs were registered on November 4, 2002.⁴ Monica
9 Dixon, who reportedly helped establish DSMF while she was working as a consultant for the
10 DSCC, was the initial treasurer for both PACs.⁵ See Peter H. Stone, *Hard Questions About Soft*
11 *Money Groups*, The National Journal, December 21, 2002 (Attachment 1 at 4). Marc Farinella,
12 formerly chief of staff and campaign manager for Missouri Governor Mel Carnahan, is DSMF's
13 Executive Director, as well as its current treasurer.⁶ See Jim VandeHei, *Democrats Initiate New*
14 *'Soft Money' Campaign*, The Washington Post, May 7, 2003 (Attachment 1 at 8). Halle Mayes,
15 who was a Deputy Finance Director with the DSCC until March 2003, is DSMF's other full time

⁴ "Democratic Senate Majority PAC" registered with the Commission on November 4, 2002, and later changed its name to "Democratic Senate Majority Fund." Statement of Organization (November 4, 2002) and Amended Statement of Organization (February 2, 2003). "Democratic Senate Majority PAC-Nonfederal Account" registered with the IRS on November 4, 2002, and later changed its name to "Democratic Senate Majority Fund Nonfederal Account." Attachment 2. DSMF non-Federal, in its Notice of Section 527 Status, identified the "Democratic Senate Majority – Federal Account" as a related entity. *Id.* Both DSMF Federal and DSMF non-Federal use Perkins Coie's Washington, D.C. address as their official address.

⁵ The DSCC's last reported payment to Dixon (\$20,000 for consulting services) was made on November 5, 2002. See DSCC's Post-Election Report (December 4, 2002).

⁶ On August 14, 2003, Farinella filed an Amended Statement of Organization for DSMF Federal, identifying himself as treasurer. Amended Statement of Organization (August 14, 2003). On September 15, 2003, DSMF non-Federal filed another Notice of Section 527 Status and changed the treasurer from Dixon to Farinella. Attachment 2 at 5.

1 employee.⁷ See Chris Cillizza, *Democratic Senate Majority Fund Slows Activity As Group*
2 *Awaits Decision in BCRA Court Case*, Roll Call, September 15, 2003 (Attachment 1 at 10).

3 DSMF reportedly began operating soon after the 2002 elections. According to National
4 Journal's Congress Daily, DSMF "sent out a November 14, 2002 alert to Democratic donors to
5 inform them they are open for business and 'plan to take an active role in the Louisiana
6 runoffs.'" *Dem PAC Forms To Aid Landrieu, Other Candidates*, National Journal's Congress
7 Daily, November 21, 2002 (Attachment 1 at 11). The letter, signed by Dixon, reportedly
8 informed Democratic supporters that DSMF could "legally accept both hard and soft dollars, and
9 intends to help Democrats at the federal, state and local levels win elections."⁸ *Id.*

10 Although DSMF has both Federal and non-Federal accounts, news accounts describe
11 DSMF's executive director as explaining that the bulk of DSMF's fundraising efforts will be
12 geared toward soft money. Farinella stated, "The idea is not to duplicate the things that [the]
13 party committee can do." Chris Cillizza, *PACs Aim To Close Gap; Top Democrats Open New*
14 *Groups*, Roll Call, March 6, 2003 (Attachment 1 at 13). "It is left to organizations such as [ours]
15 to raise soft money." *Id.* DSMF reportedly bills itself in literature to donors as "a legal way to
16 funnel soft money through a 'critical, and indeed, unique' venture to elect Democrats to the
17 Senate." VandeHei, *supra* (Attachment 1 at 7).

⁷ See *Congressional Yellow Book*, Volume 29, Number 2 (Summer 2003) at 10-11. The DSCC's last reported salary payment to Mayes was made on March 14, 2003. See DSCC's April 20 Monthly Report of Receipts and Disbursements (April 17, 2003).

⁸ During 2002, DSMF Federal contributed \$1,000 to Senator Mary Landrieu's runoff campaign and DSMF non-Federal contributed \$4,000 to Illinois Governor Rod Blagojevich's campaign committee.

1 Since its inception, however, DSMF has raised more hard money than soft money. By
2 the end of 2002, DSMF non-Federal raised \$5,000, while DSMF Federal raised \$15,000.⁹
3 During the first six months of 2003, DSMF non-Federal raised \$35,000, while DSMF Federal
4 raised \$75,898.¹⁰ Farinella reportedly explained, "Our focus this year is on creating
5 relationships, familiarizing prospective contributors with our organization, and educating people
6 about our objectives and mission." Chris Cillizza, *NCRS Remains on Hold*, Roll Call, July 3,
7 2003 (Attachment 1 at 16). "We are raising the funds we need to operate and grow, and that's
8 exactly what we knew we would have to do to be successful." *Id.*

9 DSMF appears to be familiarizing prospective contributors with its organization by
10 obtaining the Senate Democratic Party leadership's support for its hard money fundraising
11 efforts. Prior to the December 7, 2002 Louisiana runoff, Senate Minority Leader Thomas
12 Daschle reportedly attended a breakfast organized by DSMF in connection with its Louisiana
13 runoff fundraising drive. Senator Daschle reportedly "talked about the importance of the group's
14 efforts to raise hard dollars, but did not participate in any discussion of soft money fundraising."
15 National Journal's Congress Daily, *supra* (Attachment 1 at 11). On May 13, 2003, DSMF held a
16 hard money fundraiser that reportedly attracted eighteen Senators, including Senator Daschle and
17 Senate Minority Whip Harry Reid. Cillizza, *supra*, July 3, 2003 (Attachment 1 at 16).

⁹ See DSMF non-Federal's 2002 Year-End Report (Attachment 3) and DSMF Federal's 2002 Year-End Report of Receipts and Disbursements (January 31, 2003).

¹⁰ See DSMF non-Federal's 2003 Mid-Year Report (Attachment 4) and DSMF Federal's 2003 Mid-Year Report of Receipts and Disbursements (July 31, 2003).

1 DSMF reportedly intends to use the Senate Democratic Leadership's support for its hard
2 money fundraising efforts to promote its soft money fundraising program. Farinella was quoted
3 as saying:

4 "In three weeks, can I go to Microsoft and say . . . Daschle, Reid and other
5 senators are committed to this organization" and ask the company for soft money?
6 ... "Yes, I can have a conversation like that. Their presence makes clear that they
7 think this is an important organization that will ultimately make a difference to
8 help Democrats regain the Senate."

9 VandeHei, *supra* (Attachment 1 at 8).

10 **b. Legal Analysis**

11 To determine whether DSMF is directly or indirectly established, financed, maintained,
12 or controlled by a national party committee and, thus, is prohibited from raising or spending non-
13 Federal funds, the Commission would have to examine ten non-exclusive factors, set forth in
14 11 C.F.R. § 300.2(c)(2)(i) through (x), in the context of the over-all relationship between the
15 sponsor and the entity. In this case, the alleged "sponsor" would appear to be the DSCC,
16 because Dixon was reportedly involved in establishing DSMF while she was a consultant with
17 the DSCC.¹¹ As applied to the DSCC and DSMF, the most relevant factors are:

- 18 • Whether the DSCC, directly or through its agent, provides funds or goods in a
19 significant amount or on an ongoing basis to DSMF, such as through direct or
20 indirect payments for administrative, fundraising, or other costs, but not including
21 the transfer to DSMF of its allocated share of proceeds jointly raised pursuant to
22 11 C.F.R. § 102.17, and otherwise lawfully, 11 C.F.R. § 300.2(c)(2)(vii);
- 23 • Whether the DSCC and DSMF have similar patterns of receipts or disbursements
24 that indicate a formal or ongoing relationship between the DSCC and DSMF,
25 11 C.F.R. § 300.2(c)(2)(x); and
26

¹¹ Although it appears that the DSCC, through Dixon, played a significant role in the formation of DSMF, that activity, which took place before November 6, 2002, cannot be considered pursuant to the "safe harbor" regulation. See 11 C.F.R. § 300.2(c)(3).

- Whether the DSCC has any members, officers, or employees who were members, officers or employees of DSMF that indicates a formal or ongoing relationship between the DSCC and DSMF, or that indicates that DSMF is a successor entity to the DSCC, 11 C.F.R. § 300.2(c)(2)(vi).¹²

With respect to the first factor, our review of the DSCC's disclosure reports revealed no disbursements to DSMF or individuals associated with DSMF.¹³ However, it does appear that DSMF received some financial support from the DSCC's Chairman, Jon Corzine, and four members of the DSCC's Board of Trustees, who contributed a total of \$18,500 to DSMF Federal.¹⁴ Since its inception DSMF Federal has raised \$90,898 in contributions from individuals and political committees. Therefore, the DSCC Board members' contributions account for 20% of DSMF's overall contributions.

The next factor we considered was whether the DSCC and DSMF have a similar pattern of receipts or disbursements. Seventy percent (70%) of the contributors to DSMF (20 of the 25 contributors to DSMF Federal and one of the five contributors to DSMF non-Federal) also contributed to the DSCC after BCRA went into effect. On one hand, it is possible that DSMF is drawing on the DSCC's contributor base. Moreover, Mayes, who was a fundraiser for the DSCC, now appears to be a fundraiser for DSMF. On the other hand, one would expect some degree of overlap between the contributor bases of ideologically compatible organizations without there necessarily being a "formal or ongoing relationship" between the two organizations; and although the 70% total overlap among DSMF's contributors is significant, the

¹² Although this factor is phrased in terms of whether the sponsor has any members, officers or employees who were formerly members, officers or employees of the allegedly sponsored entity, the reference to "creation of a successor entity" indicates that a flow of members, officers or employees in the other direction – i.e., from the sponsor to the sponsored entity – is also highly relevant to the determination.

¹³ Although Mayes remained on the DSCC's payroll until March 14, 2003, we have no information that she was working for or assisting DSMF while she was employed by the DSCC.

¹⁴ Senators Corzine, Kennedy, and Bingaman each contributed \$5,000, Senator Lincoln contributed \$2,500, and Senator Carper contributed \$1,000. The contributions were made through their respective campaign committees or leadership PACs.

1 limited total number of contributors (30) to DSMF so far makes it difficult to determine just how
2 significant.

3 The last factor raises the issue of whether Dixon and Mayes' prior association with the
4 DSCC indicates there is a formal or ongoing relationship between the DSCC and DSMF. At the
5 very least, Dixon and Mayes' prior association with the DSCC suggests the possibility of
6 informal, ongoing relationships with individuals still employed by the DSCC. In MUR 5338
7 (The Leadership Forum), we recognized that "something more than the mere fact of such
8 informal, ongoing relationships between the personnel of a potentially sponsoring and potentially
9 sponsored entity is necessary to support a conclusion of 'establishment, financing, maintenance
10 or control.'" MUR 5338, First General Counsel's Report, dated March 27, 2002, at 18. Here, in
11 the absence of information that Dixon and Mayes continue to receive instructions or directions
12 from the DSCC, we cannot rely solely on Dixon and Mayes' prior association with the DSCC to
13 establish an ongoing relationship between the DSCC and DSMF.

14 In weighing the available information, however, this Office recognizes that certain
15 relevant information – such as the DSCC Board members' contributions and the common
16 contributors – render the decision whether to recommend an investigation a close call. Given the
17 considerations discussed in part I above, we believe the Commission should exercise its
18 prosecutorial discretion and close the file as to Democratic Senate Majority Fund Non-Federal
19 Account and Marc Farinella, as treasurer.

20 Finally, there is the issue of whether the Senate Democratic leadership's support of
21 DSMF's hard money fundraising efforts demonstrates that DSMF is established, financed,

1 maintained, or controlled by the Senate Democratic leadership.¹⁵ Although section 441i(e)
2 prohibits Federal candidates and officeholders from soliciting, receiving, directing, transferring,
3 or spending soft money, there is nothing in the Act prohibiting them from attending, speaking, or
4 being a featured guest at a hard money fundraising event for a political committee such as
5 DSMF. In fact, 2 U.S.C. § 441i(e)(3) permits Federal candidates and officeholders to attend,
6 speak, or be featured at soft money fundraising events. *See also* 11 C.F.R. § 300.64; Advisory
7 Opinion 2003-3 (U.S. Rep. Eric Cantor). Thus, because members of the Senate Democratic
8 leadership can legally attend, speak, or be featured at DSMF's fundraisers, this Office cannot
9 conclude that such activity, by itself, demonstrates that the Senate Democratic leadership
10 established, finances, maintains, or controls DSMF.

11 2. PAC for a Democratic House

12 a. Facts

13 PAC for a Democratic House ("PDH") also has a Federal PAC registered with the FEC
14 ("PDH Federal") and a non-Federal PAC registered with the IRS ("PDH non-Federal"). Both
15 PACs were registered on November 4, 2002.¹⁶ PDH is run by Howard Wolfson, who was the
16 Executive Director of the DCCC during 2002, and Jonathan Mantz, the DCCC's former Finance
17 Director. Cillizza, *supra*, Roll Call, March 6, 2003 (Attachment 1 at 12). Jessica Erickson,

¹⁵ The question of DSMF's relationship with members of the Senate Democratic leadership is important because Federal candidates and officeholders are, like national party committees, subject to an effective prohibition on raising or spending any funds not within the limitations and prohibitions of the Act. 2 U.S.C. § 441i(e); *see* 11 C.F.R. § 300.61. Thus, if the Commission determined that the Senate Democratic leadership as a group of Federal officeholders established, finances, maintains, or controls DSMF, DSMF non-Federal would be barred from raising or spending non-Federal funds.

¹⁶ *See* PDH Federal's Statement of Organization (November 4, 2002) and PDH non-Federal's Notice of Section 527 Status (Attachment 5). PDH non-Federal's Notice of Section 527 Status identifies "PAC for a Democratic House – Federal Account" as a "related entity." *Id.* PDH Federal has since changed its name to "New House PAC." Amended Statement of Organization (April 1, 2003). Karen Hancox was the initial treasurer for both entities. Both entities have since substituted Moses C. Mercado as treasurer. *Id.*; PDH non-Federal's 2003 Mid-Year Report (Attachment 6).

1 Mantz's assistant at the DCCC, also works for PDH in an unknown capacity.¹⁷ Wolfson, Mantz,
2 and Erickson stayed on with the DCCC for more than two months after PDH was established.¹⁸
3 Although we do not know whether Wolfson, Mantz, or Erickson were personally involved in
4 forming PDH, Wolfson and Mantz reportedly met with House Democratic leaders on March 4,
5 2003 "to explain the hard-money end of the PAC." *Id.* at 12. After the meeting, Wolfson told
6 reporters that Minority Leader Nancy Pelosi and DCCC Chairman Robert Matsui had cut checks
7 to the organization.¹⁹ *Id.* Other DCCC Executive Board members have contributed to PDH
8 Federal as well.²⁰

9 PDH, like DSMF, is reportedly relying on Democratic officeholders' support of its hard
10 money fundraising efforts to attract future soft money contributions.²¹ Minority Leader Nancy
11 Pelosi, along with Minority Whip Steny Hoyer, reportedly headlined a hard money fundraiser for
12 PDH on May 7, 2003. VandeHei, *supra*, (Attachment 1 at 7). Wolfson was quoted as saying, "I
13 hope the fact that members of Congress are helping us raise hard money will send an important
14 signal about the strength and viability of our organization." Wolfson, however, added, "But at
15 no time will members be involved in the soft money fund-raising that we engage in." Sharon
16 Theimer, *New partisan groups find way to keep raising money with Members of Congress*, The

¹⁷ See 2001-2002 *Official Congressional Directory*, 107th Congress, at 445; see also PDH Federal's 2003 Mid-Year Report of Receipts and Disbursements (July 31, 2003).

¹⁸ Wolfson, Mantz, and Erickson remained on DCCC's payroll until January 24, 2003. See DCCC's Monthly Report of Receipts and Disbursements (February 20, 2003).

¹⁹ PDH Federal's 2003 Mid-Year Report of Receipts and Disbursements (July 31, 2003) shows that Minority Leader Nancy Pelosi contributed \$10,000 (\$5,000 from her campaign committee and \$5,000 from her leadership PAC) and DCCC Chairman Robert Matsui contributed \$5,000 from his campaign committee to PDH Federal on March 12, 2003.

²⁰ Minority Whip Steny Hoyer contributed \$5,000 from his leadership PAC, Executive Board Chair Charles Rangel, contributed \$5,000 from his campaign committee, and Vice Chairs Edward Markey and Charlie Gonzalez each contributed \$1,000 from their campaign committees. See PDH Federal's 2003 Mid-Year Reports of Receipts and Disbursements (July 31, 2003).

²¹ As of June 30, 2003, PDH non-Federal has not reported receiving any contributions.

1 Associated Press, May 7, 2003 (Attachment 1 at 18). Although PDH non-Federal has not yet
2 reported any soft money contributions, it reportedly "plans to ask donors for soft money later this
3 year and serve as a sort of shadow campaign committee for the Democratic Party"
4 VandeHei, *supra* (Attachment 1 at 7).

5 **b. Legal Analysis**

6 In determining whether PDH is directly or indirectly established,²² financed, maintained
7 or controlled by the DCCC and, thus, is prohibited from raising or spending non-Federal funds,
8 we look at the same factors we analyzed with respect to DSMF:

- 9
- 10 • Whether the DCCC, directly or through its agent, provides funds or goods in a
11 significant amount or on an ongoing basis to PDH, such as through direct or
12 indirect payments for administrative, fundraising, or other costs, but not including
13 the transfer to PDH of its allocated share of proceeds jointly raised pursuant to
14 11 C.F.R. § 102.17, and otherwise lawfully, 11 C.F.R. § 300.2(c)(2)(vii);
 - 15 • Whether the DCCC and PDH have similar patterns of receipts or disbursements
16 that indicate a formal or ongoing relationship between the DCCC and PDH,
17 11 C.F.R. § 300.2(c)(2)(x); and
 - 18 • Whether the DCCC has any members, officers, or employees who were members,
19 officers or employees of PDH that indicates a formal or ongoing relationship
20 between the DCCC and PDH, or that indicates that PDH is a successor entity to
the DCCC, 11 C.F.R. § 300.2(c)(2)(vi).

21 With respect to the first factor, we have not uncovered any payments directly from the
22 DCCC to PDH. Moreover, while Wolfson, Mantz, and Erickson remained on the DCCC's
23 payroll until January 24, 2003, we have no information that they performed any work for PDH
24 during that time. Finally, the total amount contributed by members of the DCCC's Executive
25 Board (\$27,000) accounts for 27% of the total funds raised by PDH since its inception.²³

²² Because PDH was established prior to November 6, 2002, any activities of the DCCC's employees or agents in connection with establishing PDH cannot be considered. See 11 C.F.R. § 300.2(c)(3).

²³ During 2002, PDH Federal reported no contributions. During the first six months of 2003, PDH Federal reported receipts totaling \$101,410. See PDH Federal's 2003 Mid-Year Reports of Receipts and Disbursements (July 31, 2003).

1 With respect to whether the DCCC and PDH have similar patterns of receipts or
2 disbursements, 23 of PDH's 41 contributors also contributed to the DCCC after BCRA went into
3 effect. Although the 56% total overlap among PDH's contributors is significant, the limited total
4 number of contributors (41) to PDH so far makes it difficult to determine just how significant.

5 Finally, there is the issue of whether Wolfson and Mantz's continued employment with
6 the DCCC after PDH was formed indicates that PDH is maintained and controlled by the DCCC.
7 We have no information that Wolfson or Mantz worked in any capacity for PDH while they were
8 on the DCCC's payroll.²⁴ Nor do we have information suggesting that Wolfson and Mantz left
9 the DCCC to run PDH. After the 2002 election, the chairmanship of the DCCC changed.
10 Wolfson and Mantz served under DCCC Chair Nita M. Lowey. *See* 2001-2002 *Official*
11 *Congressional Directory*, 107th Congress, at 445. In January of 2003, Rep. Matsui took over as
12 chairman of the DCCC. News reports indicate Mantz was replaced by a new finance director
13 and Wolfson stayed on to work for the "DCCC transition team." *National Journal's House Race*
14 *Hotline, Pelosi "Convinced" Matsui To Take The Helm*, January 7, 2003 (Attachment 1 at 20).
15 Finally, although Wolfson and Mantz reportedly met with Minority Leader Pelosi and DCCC
16 Chairman Matsui to discuss the hard money component of PDH shortly after leaving the DCCC,
17 this single contact, by itself, does not demonstrate there is a formal or ongoing relationship
18 between the DCCC and PDH.

19 As with DSMF, some of the information available about PDH presents a "close call."
20 However, for the same reasons as stated with respect to DSMF, this Office recommends the

²⁴ If Wolfson and Mantz worked for PDH while they were on DCCC's payroll that would weigh in favor of finding that PDH is maintained or controlled by the DCCC. *See* 11 C.F.R. § 300.2(c)(v) (whether the sponsor has common or overlapping officers or employees with the sponsored entity).

1 Commission exercise its prosecutorial discretion and close the file as to PAC for a Democratic
2 House – Non-Federal Account and Moses C. Mercado, as treasurer.

3 **3. Democratic Issues Agenda**

4 Democratic Issues Agenda filed its Notice of Section 527 Status with the IRS on
5 November 4, 2002. Attachment 7. The stated purpose of the organization is “Development and
6 promotion of important issues of public policy.” *Id.* at 1. Diane Evans is the treasurer of
7 Democratic Issues Agenda, which lists Perkins Coie’s Washington, D.C. address as its own. *Id.*
8 at 2. Democratic Issues Agenda did not receive or spend any money during 2002 or in the first
9 six months of 2003. Because there is no other publicly available information about this
10 organization, this Office is unable to conclude that it was established, financed, maintained or
11 controlled by any Democratic national party committee. Therefore, based on information
12 currently available, this Office recommends that the Commission find no reason to believe that
13 Democratic Issues Agenda and Diane Evans, as treasurer, violated the Act and close the file as to
14 those respondents.

15 **4. Empowerment for the New Century**

16 Empowerment for the New Century filed its Notice of Section 527 Status with the IRS on
17 November 5, 2002. Attachment 8. The stated purpose of this organization is “To encourage
18 participation in the political process.” *Id.* at 1. Antonio Harrison is the treasurer of
19 Empowerment for the New Century, which also lists Perkins Coie’s Washington, D.C. address as
20 its own. *Id.* at 2. Empowerment for the New Century did not raise or spend any money during
21 2002 or in the first six months of 2003. Because there is no other publicly available information
22 about this organization, this Office is unable to conclude that it was established, financed,
23 maintained or controlled by any Democratic national party committee. Therefore, based on

information currently available, this Office recommends that the Commission find no reason to believe that Empowerment for the New Century and Antonio Harrison, as treasurer, violated the Act and close the file as to those respondents.

B. Republican Organizations

The complaint also alleges that United States Representative Tom DeLay may have directly or indirectly established, financed, maintained, or controlled two organizations, which would be prohibited from raising non-Federal funds. 2 U.S.C. § 441i(e); 11 C.F.R. §§ 300.60-62. The complaint states that these vehicles for the evasion of the Act include:

A former soft money arm of ARMPAC, the leadership PAC of House Majority Leader-elect Representative Tom DeLay. The soft money arm reportedly "disaffiliated" from DeLay's leadership PAC, but is being controlled by a former top DeLay staffer and is keeping the "ARMPAC" name. According to a published report, the House Republican Party get-out-the-vote operation in 2002, that was spearheaded by Representative DeLay and run by the [National Republican Congressional Committee] – known as Strategic Task Force to Mobilize People (or "STOMP") – is likely to be run in the future out of the "new" ARMPAC soft money entity.

Complaint ¶ 6 (*citing* Susan Crabtree, *Revamped DeLay PAC May Fund STOMP*, Roll Call (Nov. 14, 2002) (Attachment 9)). In addition, an exhibit to the complaint also suggests that Progress for America may be another vehicle designed to evade the Act. Complaint (Exhibit H).

1. U.S. Representative Tom DeLay and Americans for a Republican Majority

a. Facts

Americans for a Republican Majority ("ARMPAC"), Rep. DeLay's leadership PAC, filed its Statement of Organization with the Commission in April 1994. It was founded and is chaired by Rep. DeLay. See ARMPAC website, <http://www.goptoday.com/html/mission.cfm> (visited August 27, 2003). Americans for a Republican Majority Non-Federal Account ("ARMPAC non-Federal") registered with the IRS as a section 527 organization in August 2000. See Attachment

1 10. Before BCRA went into effect, ARMPAC apparently operated both its hard money
2 ("ARMPAC Federal") and soft money fundraising under one organizational structure, with Jim
3 Ellis as the Executive Director of both the hard money and soft money fundraising.²⁵ Indeed,
4 ARMPAC non-Federal reported to the IRS that "ARMPAC Federal" was a "related entity" until
5 June 14, 2003, when it filed an amended Notice of Section 527 Status. *See* Attachment 11.

6 As of BCRA's effective date, ARMPAC reportedly engaged in an organizational shuffle
7 to separate its Federal and non-Federal fundraising programs. According to Roll Call, Ellis,
8 along with Rep. DeLay, allegedly spun off the soft money side of ARMPAC. Crabtree, *supra*
9 (Attachment 9 at 2). Ellis purportedly "stepped down" as Executive Director of the soft money
10 arm of ARMPAC and now allegedly "oversees just the hard money side of ARMPAC." *Id.*
11 Meanwhile, Tony Rudy, Rep. DeLay's former Deputy Chief of Staff, who now works at the
12 Alexander Strategy Group ("ASG"),²⁶ reportedly "took control of the [soft money] organization
13 and plans to keep the ARMPAC name." *Id.*

14 Ellis reportedly stated in November 2002 that ARMPAC Federal "would change its name
15 to reflect DeLay's ascension to the Majority Leader position he will assume in January." *Id.* As
16 Ellis explained, "You can't have two separate entities running around with the same name." *Id.*
17 "But Ellis stressed that he and DeLay decided to change the name after consulting with election
18 law experts who recommended doing so even though the new law did not require it explicitly."

²⁵ Comparing the organizational filings of these accounts reveals that both ARMPAC Federal and ARMPAC non-Federal list the same address of Williams & Jensen, "1155 21st Street, NW, Suite 300, Washington, D.C. 20036," as their own. Barbara W. Bonfiglio, an attorney at Williams & Jensen, is also listed as ARMPAC Federal's Assistant Treasurer and ARMPAC non-Federal's Custodian of Records. Corwin Teltschik is listed as ARMPAC Federal's Treasurer. ARMPAC's website states that it is located at "3000 K Street, NW, Suite 125; Washington, D.C. 20007." *See* ARMPAC website, *supra*.

²⁶ ASG is a Washington-based lobbying and public affairs firm that was founded by Ed Buckham, Rep. DeLay's former Chief of Staff. *See* ASG website, <http://www.buckham.com/asg> (visited October 15, 2003).

1 *Id.* Yet, even though Rep. DeLay has assumed the role of House Majority Leader, ARMPAC
2 Federal has not changed its name. Thus, both the hard money and soft money sides of
3 ARMPAC continue to use the same root name and the same acronym.

4 **b. Response to Complaint**

5 On December 19, 2002, ARMPAC Federal submitted a response to the complaint.²⁷ The
6 response states that the complaint does not list ARMPAC Federal "as a defendant," but instead
7 only references "the soft money arm of ARMPAC which is a separate and distinct entity from
8 the organization for which Mr. Teltschik serves as Treasurer." ARMPAC Federal Response at 1.
9 The response further states that ARMPAC Federal is a Federal political action committee
10 properly registered with the Commission, that it "only raises money from individuals and other
11 Federally registered committees and has never accepted corporate contributions" and that it "has
12 not violated the provisions of BCRA that went into affect [sic] on November 6, 2002, and has no
13 intention of violating any of the provisions" of BCRA. *Id.*

14 Rep. DeLay did not submit a response to the complaint, but the article cited in the
15 complaint states that BCRA forced Rep. DeLay to distance himself from ARMPAC non-Federal.
16 Indeed, Rudy, who allegedly took control of ARMPAC non-Federal, reportedly said that Rep.
17 DeLay "will not solicit or raise money for the group." Crabtree, *supra* (Attachment 9 at 2).

18

²⁷ ARMPAC non-Federal did not separately submit a response to the complaint. After this Office notified Americans for a Republican Majority PAC and Corwin Teltschik as treasurer, of the complaint, it then received a response from Barbara Bonfiglio. Ms. Bonfiglio is the named Assistant Treasurer of ARMPAC Federal. Ms. Bonfiglio is also the only individual named on ARMPAC non-Federal's IRS Notification of Section 527 Status Form 8871 as a person of record, namely Custodian of Records. Attachments 10-11. Because Form 8871 also showed the same address of record as ARMPAC Federal, namely the law firm of Williams and Jensen, after activation, this Office concluded that other than Bonfiglio, who had already responded on behalf of ARMPAC, there was simply no one else to notify on behalf of ARMPAC non-Federal, and that adequate notice of the complaint had therefore already been given.

1 **c. Legal Analysis**

2 The issue raised by the complaint is whether ARMPAC non-Federal is barred from
3 raising or spending soft money. The Act provides that an individual holding Federal office or an
4 entity "directly or indirectly established, financed, maintained, or controlled by such an
5 individual" shall not "solicit, receive, direct, transfer, or spend funds in connection with an
6 election for Federal office . . . unless those funds are subject to the limitations, prohibitions, and
7 reporting requirements of this Act." 2 U.S.C. § 441i(e)(1)(A). As detailed, *infra*, this Office
8 recommends the Commission exercise its prosecutorial discretion and close the file as to U.S.
9 Representative Tom DeLay, Americans for a Republican Majority and Corwin Teltschik, as
10 treasurer, and Americans for a Republican Majority Non-Federal Account and Tony Rudy, as
11 Executive Director.²⁸ Even if one assumed that ARMPAC Federal was a "leadership PAC"
12 established and controlled by Rep. DeLay within the meaning of 2 U.S.C. § 441i(e)(1), available
13 information bearing on whether ARMPAC Federal directly or indirectly established, finances,
14 maintains, or controls ARMPAC non-Federal - - in which case Rep. DeLay would indirectly
15 establish, finance, maintain, or control ARMPAC non-Federal, and ARMPAC non-Federal
16 would be subject to 2 U.S.C. § 441i(e) - - presents too close a call to warrant proceeding under
17 these circumstances. *See supra* at 12.

18 To determine whether ARMPAC non-Federal is directly or indirectly established,
19 financed, maintained, or controlled by ARMPAC Federal and, thus, is prohibited from raising or
20 spending non-Federal funds, the Commission would have to examine ten non-exclusive factors,

²⁸ ARMPAC non-Federal would also be barred from raising or spending soft money if Rep. DeLay *directly* solicits, receives, directs, transfers, or spends any non-Federal funds in connection with either ARMPAC Federal or non-Federal. Based on a review of the complaint and its attached exhibits, however, there is no information that describe such a violation of the Act. 11 C.F.R. § 111.4(d).

1 set forth in 11 C.F.R. § 300.2(c)(i) through (x), in the context of the over-all relationship between
2 the sponsor and the entity. In this case the alleged “sponsor” would be ARMPAC Federal.

3 • *The Official Filings and Names of ARMPAC Federal and ARMPAC non-Federal*

4 Both ARMPAC Federal and ARMPAC non-Federal obviously use the same root name.
5 Moreover, not until June 14, 2003 did ARMPAC non-Federal amend its IRS Form 8871, which
6 is analogous to Statements of Organization filed with the Commission, to reflect its separation
7 from ARMPAC Federal. Attachments 10-11. Thus, between November 6, 2002 and June 14,
8 2003, ARMPAC non-Federal continued to report to the IRS that ARMPAC Federal was a
9 “related entity.” *Id.* Both the Internal Revenue Code and the Instructions for Form 8871 state
10 that, “An entity is a related entity if ... [t]he organization and that entity have (a) significant
11 common purposes and substantial common membership or (b) substantially common direction or
12 control (either directly or indirectly).” *See* 26 U.S.C. §§ 168(h)(4), 527(i)(3)(D); *compare with*
13 11 C.F.R. §§ 300.2(c)(2)(ii) (“authority to direct or participate in the governance of the entity”);
14 (iii) (ability or authority to hire, appoint, demote or otherwise control the officers or other
15 decision-mak[ers]); (iv) (“common or overlapping membership”); and (v) (“common or
16 overlapping officers or employees”). On the other hand, the original Form 8871 was filed on
17 August 4, 2000, well before BCRA’s effective date of November 6, 2002. And even if the
18 continued appearance of the form on the IRS website after November 6, 2002 allows the
19 Commission to consider it, *see* 11 C.F.R. § 300.2(c)(3), there is no other publicly available
20 information indicating that anything of note occurred on or about June 14, 2003 that would have
21 caused the amendment. At this point, it appears as likely as not that ARMPAC non-Federal
22 simply neglected to amend its Form 8871 in a timely fashion.

• *Common Disbursements between ARMPAC Federal and ARMPAC non-Federal*

An analysis of ARMPAC Federal and ARMPAC non-Federal's 2002 Year End Reports (from November 26, 2002 to December 31, 2002), shown in the chart below, also reveals similar patterns of disbursements suggesting that at least in the first weeks after BCRA's effective date, ARMPAC non-Federal continued to have a relationship of some sort with individuals associated with ARMPAC Federal. Similar patterns of disbursements that may indicate an ongoing relationship between two entities are among the enumerated factors to be considered in determining whether one entity established, finances, maintains, or controls another. 11 C.F.R. § 300.2(c)(2)(x).

These common disbursements were:

	ARMPAC Federal	ARMPAC non-Federal
Disbursement Recipient		
Jim Ellis	\$5,909	\$2,002
Danielle Ferro	\$12,359	\$5,083
Christopher Perkins	\$9,024	\$5,682
Michael Murphy	\$8,319	\$5,000

See Attachment 13. These disbursements were usually listed as "fundraising expenses." *Id.* Others who have received "fundraising expenses" are reportedly officers of the ARMPAC Federal and ARMPAC non-Federal, such as Ellis and Rudy. *Id.* Additionally, another person who received payments from ARMPAC non-Federal between November 26 and December 31, 2002 while maintaining formal ties with Rep. DeLay was Stuart Roy. Roy received \$1,055 from ARMPAC non-Federal at the same time he was Rep. DeLay's communications director. Attachment 13.

Notably, however, except for a single \$80 disbursement to Michael Murphy (Attachment 14) and continued payments to Barbara Bonfiglio, a Washington attorney who apparently provides professional treasurer services to a number of committees and "527" organizations,

1 these payments stop entirely at the end of calendar year 2002. This indicates the expenses may
2 have been outstanding reimbursements for activity undertaken by the recipients prior to BCRA's
3 effective date of November 6, 2002.²⁹

4 • *ARMPAC non-Federal's other possible ties to Rep. DeLay*

5 While not fitting precisely into one of the non-exhaustive list of factors at 11 C.F.R.
6 § 300.2(c), the apparent relationships between ARMPAC Federal and ARMPAC non-Federal,
7 the Alexander Strategy Group ("ASG"), and Rep. DeLay are relevant to this analysis. Rudy,
8 ARMPAC non-Federal's Executive Director is a former Deputy Chief of Staff to Rep. DeLay.
9 He apparently operates ARMPAC non-Federal from his office at ASG, where he is "responsible
10 for managing government relations teams and lobbying on behalf of ASG's largest clients." *See*
11 ASG website, *supra*. ARMPAC non-Federal has disbursed over \$63,000 to ASG in 2003, more
12 than any other entity since November 25, 2002.

13 ASG, in turn, maintains its own connections with Rep. DeLay. Ed Buckham, who
14 founded ASG and was Rep. DeLay's former Chief of Staff, as recently as July 2003 reportedly
15 said, "We will always encourage our clients to help Tom DeLay. . . . We're a large, extended
16 family across the country." Juliet Eilperin, *'Extended Family' Links Corporate, Political*
17 *Worlds*, July 22, 2003 (Attachment 12 at 1). Meanwhile, Rudy reports on ASG's website that he
18 "had extraordinary access and influence" in his position. ASG website, *supra*. Karl Gallant,
19 recruited by Rep. DeLay to serve as Executive Director of ARMPAC in 1995, is also at ASG,
20 where he touts his past role as a key advisor to Rep. DeLay. *Id.* Furthermore, ASG appears to
21 be located on the same floor of the same building as ARMPAC Federal. ASG is located at 3000

²⁹ Finally, on April 9, 2003, ARMPAC non-Federal made a \$21,000 disbursement for "telemarketing expenses" to an entity called Advocacy Technologies, LLC. While additional information about this entity is unknown, it shares an address identical to ARMPAC Federal – 3000 K Street, NW, Suite 125.

1 K Street, NW, Suite 101; ARMPAC Federal is located at 3000 K Street, NW, Suite 125. On the
2 other hand, as noted *supra* at 11-12 with respect to DSMF, prior employment relationships do
3 not, without more, establish that an entity is controlled by its employees' prior employer.

4 • *Conclusion*

5 Like the information about DSMF and PDH, the available information about the overall
6 relationship between ARMPAC Federal and ARMPAC non-Federal presents a close call as to
7 whether an investigation is warranted to determine if ARMPAC Federal may yet maintain or
8 control ARMPAC non-Federal, or at least that whether separation between the two organizations
9 was completed as of November 6, 2002. However, as with those two entities, and for the reasons
10 stated in Part I, *supra*, we believe the Commission should not proceed in this particular matter.
11 Accordingly, we recommend that the Commission exercise its prosecutorial discretion and close
12 the file as to U.S. Representative Tom DeLay, Americans for a Republican Majority and Corwin
13 Teltschik, as treasurer, Americans for a Republican Majority Non-Federal Account and Tony
14 Rudy, as Executive Director.

15 **2. Strategic Task Force to Mobilize People ("STOMP")**

16 As mentioned, the complaint states that STOMP is a get-out-the-vote operation that was
17 run out of the National Republican Congressional Committee ("NRCC") for Republican
18 members of the House of Representatives. *See* Complaint ¶ 6.

19 There is no information that STOMP is itself a legal entity or a "person" within the
20 meaning of 2 U.S.C. § 431(11); STOMP appears to be a program name. According to a news
21 article, after November 6, 2002 the NRCC planned to disaffiliate from its STOMP program.
22 Crabtree, *supra* (Attachment 9). Reports further state that ARMPAC non-Federal would
23 continue the program. *Id.* Therefore, this Office recommends that the Commission find no

1 reason to believe that the Strategic Task Force to Mobilize People violated the Act and close the
2 file as to that respondent.

3 **3. Progress for America**

4 Progress for America ("PFA") is a non-profit corporation and operates "in a manner
5 consistent with section 501(c)(4) of the Internal Revenue Code."³⁰ See
6 <http://www.progressforamerica.com/pfa/index.jsp> (visited August 28, 2003). Tony Feather is
7 president of PFA. On December 17, 2002, PFA responded to the complaint notification. The
8 response states in its entirety that PFA "is not mentioned in the complaint and is only referred to
9 (inaccurately) in an accompanying newspaper article. Progress for America should not be
10 considered a part of this complaint. Progress for America was established in February 2001 as a
11 tax-exempt entity and does not engage in the types of activities described in the complaint."
12 PFA Response. PFA's website also states that it "does not engage in any federal election
13 activities." PFA website, *supra*.

14 While news reports state that PFA "has raised millions of dollars, which it uses to
15 promote Bush's agenda of tax cuts, energy legislation, conservative judicial appointments and
16 free trade," and that PFA has "strong ties to the Republican establishment," this alone is not
17 sufficient to describe a violation of the Act. Complaint (Exhibit H). Nor has this Office, upon a
18 survey of publicly available information, discovered any information to suggest that PFA has
19 been otherwise impermissibly active after BCRA's effective date. Therefore, this Office
20 recommends that the Commission find no reason to believe that Progress for America and its
21 treasurer violated the Act and close the file as to those respondents.

³⁰ A review of IRS Publication 73, which lists all 501(c)(4) tax-exempt organizations, does not list PFA. Progress for America is listed, however, as a 501(c)(6) organization. Because it is registered neither with the Commission as a political committee nor with the IRS as a "527" organization, no information about PFA's receipts or disbursements is publicly available.

IV. RECOMMENDATIONS


1. Close the file as to Democratic Senate Majority Fund – Non-Federal Account and Marc Farinella, as treasurer.
2. Close the file as to PAC for a Democratic House – Non-Federal Account and Moses Mercado, as treasurer.
4. Find no reason to believe that Democratic Issues Agenda and Diane Evans, as treasurer, violated the Act and close the file.
5. Find no reason to believe that Empowerment for the New Century and Antonio Harrison, as treasurer, violated the Act and close the file.
6. Close the file as to U.S. Representative Tom DeLay
7. Close the file as to Americans for a Republican Majority and Corwin Teltschik, as treasurer.
8. Close the file as to Americans for a Republican Majority Non-Federal and Tony Rudy, as executive director.
9. Find no reason to believe that Strategic Task Force to Mobilize People violated the Act and close the file.
10. Find no reason to believe that Progress for America and its treasurer violated the Act and close the file.
11. Approve the appropriate letters.

1/15/04
Date

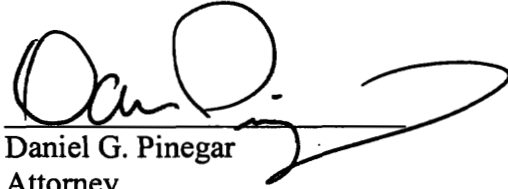
Lawrence H. Norton
Lawrence H. Norton
General Counsel

Rhonda J. Vosdigh (by LLC)
Rhonda J. Vosdigh
Associate General Counsel
for Enforcement

Jonathan A. Bernstein
Jonathan A. Bernstein
Assistant General Counsel



Jack A. Gould
Attorney



Daniel G. Pinegar
Attorney

Attachments:

1. News Articles
2. Notice of Section 527 Status – Democratic Senate Majority PAC – non-Federal Account (November 4, 2002), amended Notice of Section 527 Status (April 16, 2003), and amended Notice of Section 527 Status (September 15, 2003)
3. DSMF non-Federal's 2002 Year-End Report
4. DSMF non-Federal's 2003 Mid-Year Report
5. Notice of Section 527 Status – PAC for a Democratic House (November 4, 2002)
6. PDH non-Federal's 2003 Mid-Year Report
7. Notice of Section 527 Status – Democratic Issues Agenda (November 4, 2002)
8. Notice of Section 527 Status – Empowerment for a New Century (November 5, 2002)
9. Complaint (Exhibit E) – News Article
10. Notice of Section 527 Status – Americans for a Republican Majority non-Federal Account (August 4, 2000)
11. Amended Notice of Section 527 Status – Americans for a Republican Majority non-Federal Account (June 14, 2003)
12. News Articles
13. ARMPAC non-Federal's 2002 Year-End Report
14. ARMPAC non-Federal's 2003 Mid-Year Report